DTR Industries, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Cases 8–CA–22436 and 8–RC–14189

May 28, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On December 31, 1991, Administrative Law Judge Thomas A. Ricci issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed exceptions, a supporting brief and appendix binder, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions only to the extent consistent with this Decision and Order.

1. We agree with the judge that the Respondent violated Section 8(a)(1) by numerous threats of plant closure, job loss, and layoff if employees did not vote against the Union.[3] The General Counsel excepts to the judge's failure to find that the Respondent's November 10, 1989[4] letter to employees also contained threats to close the plant and lay off or discharge employees in violation of Section 8(a)(1). The record establishes that 1 week before the November 17 election, the Respondent's president, Yuji Kobayashi, issued a four-page letter telling employees, inter alia, ''your future . . . is on the line,'' ''a union would hurt our business,'' ''our business would automatically be reduced if the union wins the election,'' ''if a contract is negotiated without a strike, employees are laid off while the inventory is used,'' and ''bringing a union would lose business for DTR.''

We find it unnecessary to determine the lawfulness of all of these statements. We find that the following language from Point 3 of Kobayashi's letter in which he concludes that ''Bringing a union would lose business for DTR'' had a reasonable tendency to coerce employees when viewed against the background of the Respondent's other threats of layoff, job loss, and plant closure:

> Our business would automatically be reduced if the union wins the election and our customers took away 50 percent of our sole source business. They could, of course, take it all away and sole source with some non-union company. They do not have to give any business to DTR.
>
> Furthermore, most labor contracts are for three year terms. The U.S. auto companies force their unionized suppliers to build a 90-day inventory of parts before any labor contract termination. If the supplier fails to do so, it usually loses its order. That means that unionized suppliers, such as our associate Norbalt, are required to work overtime before the end of every labor contract and then, if the contract is negotiated without a strike, employees are laid off while the inventory is used.
>
> Point 3 really comes down to this. Bringing a union would lose business for DTR . . . .

Kobayashi's statements directly focused responsibility for the claimed economic consequences on unionization without reference to objective facts showing that its customers maintained a policy (lawful or otherwise) against contracting with unionized companies or required an inventory stockpile prior to contract expiration. In assessing Kobayashi's remarks in their entirety, and when viewed against the backdrop of the Respondent's other unlawful conduct, we conclude that he unlawfully threatened his employees without an objective basis that if they unionized, the Respondent's sole source customers would necessarily find another supplier and take away business necessitating layoffs.

[1] The Respondent contends that Sec. 10(b) bars the Sec. 8(a)(1) allegations. We find no merit to this contention. Sec. 10(b) is not jurisdictional in nature. It is an affirmative defense and, if not timely raised, is waived. *McKesson Drug Co*., 257 NLRB 468 fn. 1 (1981) citing *Penn Corp*., 239 NLRB 45 (1978); *Systems Council T-6, Electrical Workers (New York Telephone)*, 236 NLRB 1209, 1217 (1978), enfd. 599 F.2d 5 (1st Cir. 1979). The Respondent first raised the defense of Sec. 10(b) in its brief to the administrative law judge and did not plead this affirmative defense in its answer or litigate the issue at the hearing. Therefore, we find that the Respondent did not raise the affirmative defense of Sec. 10(b) in a timely manner and that this defense was waived. See *NLRB v. Wizard Method, Inc*., 897 F.2d 1233 (2d Cir. 1990).

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] Based on the credited testimony, we find no merit to the Respondent's exceptions to the judge's 8(a)(1) findings concerning threats by Supervisors Joe Brinkman, Greg Lewandowski, Alan Haynes, Robert Falk, and Dot Jordan, including specified repetitive statements that the Company would go out of business or employees would lose their jobs if the employees persisted in their union activity.

We note, contrary to the judge, however, that employee James McClain, not employee Donald Anderson, recalled Supervisor Jordan saying about 3 weeks before the election, ''that she hated to see the union come in because they'd close the doors, and she didn't want to lose her job.'' We also note that the testimony of employee John Latimer confirms that Jordan made a similar threat. Thus, Latimer testified that in early November, while McClain was present, Jordan said she was seeking employment at two other places because if the Union came in, DTR would close.

[4] All dates are in 1989 unless otherwise indicated.

NLRB v. Gissel Packing Co., 395 U.S. 575, 618 (1969); *Harrison Steel Castings Co.*, 293 NLRB 1158, 1159 (1989); *Gupta Permold Corp.*, 289 NLRB 1234, 1251–1252 (1988).[5]

2. We agree with the judge that the Respondent violated Section 8(a)(1) by promising improvements in wages, benefits, and other terms and conditions of employment if the employees voted against the Union, and by interrogating James McClain as to the identity of union activists.

3. We also agree with the judge that the Respondent unlawfully solicited, promised to remedy, and remedied grievances, but only for the following reasons. The complaint alleges that the Respondent solicited grievances from employees by instituting employee suggestion boxes on October 13, and by instituting a toll-free hotline on November 10.[6] The judge found a violation based on the Respondent's policy to deal directly with its employees in order to bypass any collective-bargaining agent they might choose. The Respondent claims that it has no obligation to bargain with the Union or avoid dealing directly with employees concerning terms and conditions of employment. The Respondent contends that the ''communication box'' and toll-free number simply supplanted a past practice of soliciting employee complaints through group leaders, and were legitimately implemented to repair the breakdown in communication resulting from the union campaign. The Respondent further contends that it made routine business changes and improvements in sanitation because of rapid growth that would have been made regardless of the union campaign.

Contrary to the Respondent's contentions, we find that its institution of the communication boxes and toll-free hotline through which it solicited, implicitly promised to remedy, and remedied specifically expressed employee complaints and grievances, was designed to discourage union activity among its employees and violated Section 8(a)(1) of the Act.[7] Both these programs were established after the advent of union organizing and represented a new approach to grievances. When an employer institutes a new practice of soliciting employee complaints during an organizational campaign, there is a compelling inference of an implicit promise to correct inequities discovered and to convince employees that the combined program of inquiry and correction will make union representation unnecessary. *Middletown Hospital Assn.*, 282 NLRB 542, 544 (1986); *Reliance Electric Co.*, 194 NLRB 44, 46 (1971).

The Respondent's installation of communication boxes in employee locker rooms shortly after the Union filed its September 25 representation petition allowed employees to ask questions and complain about wages, hours, and working conditions and to receive written answers from management. Through this new practice the Respondent provided answers to 42 employee questions; it promised and made restroom improvements concerning soap dispensers and toilet seats; it implicitly promised and made improvements in the time allowed for employee lunchbreaks; it installed mirrors and trashcans in locker rooms; it installed new bells for shift breaks and lunches; it promised to install, and installed on election day, a phone for outside calls; and it implicitly promised and actually implemented a shorter probationary period after the election.

These changes in the Respondent's approach to grievances, combined with the speedy remedy of several complaints solicited from employees, conveyed the message that the Respondent, in its effort to defeat the Union, was willing to look more favorably on any request they might make. *Stride Rite Corp.*, 228 NLRB 224 (1977). Accordingly, we find that the Respondent solicited and implicitly promised benefits in an attempt to undermine the Union's support in violation of Section 8(a)(1). We further find that the Respondent's actual grant of the promised benefits also violated Section 8(a)(1). *House of Raeford Farms*, 308 NLRB 568, 569–571 (1992).

[5] We reject the Respondent's claim that its articulation of the ''sole source scenario'' was lawful and demonstrably probable under *NLRB v. Gissel Packing*, supra, because Kobayashi focused solely on what customers might do if DTR experienced labor problems and his statement thus constituted legitimate predictions of economic consequences outside of the Respondent's control. In support of its argument, the Respondent relies, inter alia, on *Jetsetter Express*, Case 32–CA–10725, JD–(SF)–62–91, slip op. at 14 (May 31, 1991). The Board adopted the administrative law judge's decision in that case in the absence of exceptions. It thus lacks any value as precedent. *Anniston Yarn Mills*, 103 NLRB 1495 (1953). Moreover, unlike the situation in *Jetsetter*, the Respondent failed to establish that its customers had a policy of terminating the contracts of suppliers that underwent unionization or that the Respondent's customers actually informed it that they would pull orders or terminate their contracts if the Respondent was unionized.

[6] More specifically, the complaint alleges that on various dates from October 20 through November 17, the Respondent granted or promised specific benefits and improvements in working conditions and discharged its plant manager, George Fyler, as a direct or indirect result of its solicitation of grievances through the employee suggestion box.

We dismiss the complaint allegations concerning the October 31 discharge of Plant Manager George Fyler and the November 1 institution of a new, improved uniform policy because the record fails to establish that these actions resulted from solicitation of employee grievances through the suggestion box. We note that the General Counsel pursued no alternative theory of violation.

[7] We rely on the 800 hotline only to the extent that it confirms the solicitation of grievances. *Springfield Jewish Moving Home*, 292 NLRB 1266, 1269, 1274 (1989).

4. We agree with the judge that the Respondent unlawfully promised employees a wage increase before the November 17 election and then unlawfully granted a postelection wage increase to reward its employees for voting against the Union. The following facts, not mentioned by the judge and largely established during presentation of the Respondent's case, are helpful.

In March and April 1989, well before the onset of the Union's mid-September organizational efforts, the Respondent reviewed a confidential, area wage survey and certain in-house memoranda that articulated economic and competitive reasons for increasing the Respondent's wage scale. In mid-May, the Respondent's officials decided to establish a competitive wage policy. The specifics of the policy, including the wage scale progression and amounts, were left for further study following completion of the Respondent's own area wage survey.

In early June, the Respondent received several complaints from group leaders summarizing employee complaints about working conditions, including the absence of a wage scale. Also about this time, an employee quit to work for a competitor at twice the Respondent's top wage rate. By June 21, the Respondent compiled a confidential, hourly wage schedule delineating a recommended timetable for effectuating what the Respondent's witnesses described as a two-step approach. The first step was a ''short term'' wage increase designed to address the immediate concerns expressed by the group leaders. The second step, a longer-term wage policy, was scheduled to be announced and published around July 31.[8]

Management next discussed wages in July, after the Respondent's own wage and benefit survey had been completed. The Respondent's officials discussed specific percentage figures proposed for the short-term interim wage increase. No final decision was reached. The long-term wage policy was not discussed.

The Respondent's officials met again on August 10. They decided that the short-term increase would be 5 percent, resulting in a 35 cent-per-hour increase for employees with 18 months' continuous service. Documentary evidence confirms that the wage scale progression covering general factory workers, maintenance trainees, and group leaders was announced September 1 and implemented September 4. The Respondent testified that although it was ''not able to discuss'' the long-term wage policy at this time and although no specific written proposal existed, the Respondent intended to announce the long-term policy by October.

On September 25, approximately 3 weeks after the new wage scale progression was in place, the Union filed its representation petition. The Respondent claims that the petition was filed before it could finish its work on the long-term wage policy, and that this work was delayed after the petition for two reasons. First, management had to spend time addressing the union campaign. Second, counsel advised management not to increase wages during the preelection period.

In mid-October, the parties stipulated under Board auspices that group leaders were supervisors excluded from the unit. Shortly thereafter, group leaders' wages were raised from $7.50/$7.85 per hour to $10 per hour. Before the group leaders received this raise, they were paid about 50 cents more per hour under the Respondent's prevailing wage scale than unit employees. By memo to employees dated October 18, the Respondent told them, inter alia:

> You need to know we have started to address your concerns. We have not moved as fast as we should have. We are working on an employee handbook. We have established a wage policy. Please understand that the law forbids us from making any changes in or promises regarding your wages and benefits. We are able to give the Group Leaders a raise because the union, the Company and the National Labor Relations Board have agreed that the Group Leaders are supervisors. Supervisors by law cannot vote in the upcoming election. Because of this, the law allowed us to give the Group Leaders a wage adjustment.
>
> We want very much to grow together from this new beginning. We pledge to continue listening to your concerns and to respond as completely and as quickly as we can.

As noted, throughout October and early November, the Respondent unlawfully solicited employees' complaints through the ''communication box,'' including why group leaders suddenly received substantial wage increases after the September wage scale progression was set and after the Respondent knew that a union election was scheduled. The Respondent's responses included the following:

> After DTR issued the wage policy on September 1, it realized that its wages were not fully competitive. You told us this, and we looked more closely at wages in the area and in our industry and realized that you were right. We intended to make up for this mistake as quickly as possible. Once the Union petition was filed, we could not legally change our wage policy for any employee who might vote in the election. As soon as we knew that the group leaders could not vote, we

[8] According to the Respondent's recommended timetable, the July 31 announcement and publication would follow completion of the Respondent's wage survey in late June, President Yuji Kobayashi's scheduled return from a visit to Japan in early July, and a month of preparation and decision-making regarding the long-term wage policy. The Respondent testified that implementation of its two-step approach was delayed by President Kobayashi's travel to Japan and the death of Manufacturing Vice President Ishikawa's father.

> brought their wages up to the level they should have been raised to in September. It was our mistake to issue a wage policy in September that was not as competitive as it should have been, and we apologize to our associates for that mistake.

The Respondent also informed employees that:

> DTR is prohibited by law from making any adjustments to associates' wages until after the election. The same law prohibits us from making any promises to you as to any adjustments that might be made after the election. This law does not affect the Group Leaders, because the Group Leaders are not part of the voting unit.

Despite these assertions, the credited testimony of employees Martin Clum, Timothy Korte, Scott Evans, and John Latimer establishes that the Respondent promised improvements in wages and benefits in the weeks preceding the election.[9] Further, the week before the November 17 election, the Respondent's top management held a series of confidential meetings on November 12, 13, and 14 to discuss the long-term wage policy. In fact, on Sunday, November 12, the Respondent discussed a specific proposal providing for incremental 50-cent-per-hour increases after each 6 months of employment culminating in a $9.50 hourly rate after 3 years of employment.[10] No definitive decision was arrived at during this meeting.

On November 13, management discussed whether a modified long-term wage proposal with a $10 ceiling after 3 years of employment was competitive. No conclusion was reached. The Respondent's labor consultant was instructed to prepare a revised draft.

On November 14, the Respondent's management discussed its consultant's modified draft proposal. This proposal reduced the wage progression from 36 to 24 months, contained a top rate of $10.25 per hour, and compared wage adjustments under both the Respondent's prevailing wage scale and its November 12 proposal. No final decision was arrived at prior to the election on Friday, November 17.

On Monday, November 20, the Respondent decided to adopt its labor consultant's November 14 proposal, adjusted upward by 10 cents per hour to exceed wages prevailing at all local competitors. This resulted in a minimum hourly rate of $10.35 for employees with 2 years of service.

On November 20, President Kobayashi held shift meetings to deliver a speech to employees. He told employees that he knew they were anxious for him to announce a new wage policy but that he could not do so until the period for filing election objections expired. He promised more information on November 28.

On November 28, Kobayashi delivered a speech announcing a new wage policy. He told employees, inter alia, that the Union's election objections placed a cloud over the Company; that his lawyers advised against granting wage improvements until the objections were resolved; that he did not believe the objections should foreclose wage improvements that employees deserved ''now,'' nor prevent the Company from paying competitive wage rates to retain and recruit the best personnel. Accordingly, Kobayashi announced the new wage policy retroactive to November 19. It contained general, across-the-board increases to be received in December 8 paychecks, and annual cost-of-living adjustments effective each January. Kobayashi promised an individual calculation of the new wage scale progression. He also announced the abolition of the 6-month probationary period and the substitution of a new 90-day training period that would result in Thanksgiving, Christmas, and New Year's holiday pay for employees with less than 6 months of seniority.

Based on the foregoing evidence, including testimony credited by the judge, we agree with the judge that the Respondent unlawfully told employees before the election that they would get a raise if they rejected the Union. We also find, as alleged, that President Kobayashi's October 18 memo to employees implicitly promised benefits, including improved wages and working conditions, if the Union lost the election.

An employer's legal duty during a pending representational campaign is to proceed with the granting of benefits in the normal course of business as if the union were not on the scene.[11] The Respondent failed to do so. It held out the ''carrot or the stick,'' promising wage increases, but withholding their actual grant until it received the favorable election result it wanted. The Respondent also answered unlawfully solicited employee wage complaints by telling employees that raises were warranted as a result of its wage survey, but could not be given because the Union's campaign

[9] We note that employee Brian Baumgartner's testimony that Supervisor Lewandowski told him during an extended conversation a couple of weeks before the election that if the Union was voted out the Respondent would go ahead and make changes and improvements, is consistent with John Latimer's credited testimony that Lewandowski told him that after the election the Respondent would announce a favorable compensation package. Baumgartner's testimony also lends further support to Scott Evan's credited testimony that Human Resource Manager Haynes stated shortly before the election that if employees voted ''No,'' the Company would announce the wage package.

[10] This evidence is consistent with Clum's credited testimony that shortly before the election, when Clum asked Supervisor Haynes about the truth of a rumor that wages would be increased to $9.50 per hour, Haynes informed Clum of management wage meetings in which wages were going up and up.

[11] *Great Atlantic & Pacific Tea Co.*, 166 NLRB 27, 29 (1967) (''an employer, in deciding whether to grant benefits while a representation proceeding is pending, should decide the question as he would if a union were not in the picture'').

might make such increases appear to be bribes. It then granted substantial wage increases to group leaders. To the extent that the Respondent's remarks during the campaign created the impression that employees might have received wage increases but for the Union's presence on the scene, they constituted a violation of Section 8(a)(1) by placing blame on the Union for its withholding those increases.[12]

We emphasize that the Respondent failed to assure employees that they would ultimately receive competitive wage increases irrespective of the results of the election. We also emphasize our findings that the Respondent concurrently engaged in unfair labor practices designed to discourage and undermine support for the Union. Consequently, we reject the Respondent's arguments that its actions with respect to wages were designed to avoid the appearance of attempting to discourage support for the Union.[13] Rather, the only reasonable inference left for employees was that their own desire to improve their lot through union representation had deprived them of increases they might have otherwise received. As the Supreme Court observed in *NLRB v. Exchange Parts Co*., 395 U.S. 405, 409 (1964):

> The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

We conclude from the entire record that the Respondent manipulated the timing of its grant of wage increases to influence its employees' decision in the upcoming election. Thus, after the Union lost the November 17 election by a 1-vote margin, 37 to 36, the Respondent made good on its unlawful preelection promises of wage increases. We find that its November 28 announcement implementing a substantial wage increase averaging $1.85 per-hour for each employee retroactive to commencement of the payroll period immediately following the Union's election defeat, in conjunction with the granting of other financial benefits also announced that day, was calculated to convey the message that the Respondent would treat employees better without the Union and to grant a quick reward for voting against the Union.

5. We find merit in the General Counsel's exception to the judge's failure to find that the Respondent maintained an unlawful no-solicitation/no-distribution rule in its employee handbook. The Respondent issued to new hires a document entitled, ''Discipline and Rules of Conduct.'' This document contained the following no-solicitation/no-distribution rule:

> 3.e. Unauthorized soliciting of funds or distributing literature on Company property. Unauthorized posting or removal of notices, signs or writing in any form on bulletin boards or Company property at any time.

We find the rule overly broad because it does not distinguish between working time and breaktime and does not state that employees can solicit on their own time in nonwork areas of the plant. Accordingly, we conclude that maintenance of the rule violated Section 8(a)(1) as alleged. *Ebon Research Systems*, 290 NLRB 751 (1988); *Baddour, Inc*., 281 NLRB 546 (1986).[14]

6. The General Counsel excepts to the judge's failure to make findings with respect to the Union's election objections that were consolidated for hearing with the unfair labor practice case.[15] We find merit to Objections 1, 2, 3, 5, and 6 to the extent that they are coextensive with preelection unfair labor practices that we have found.[16] On this basis, we shall order that the

[12] *NLRB v. Otis Hospital*, 545 F.2d 250, 254, 255 (1st Cir. 1976); *Abbey's Transportation Services*, 837 F.2d 575 (2d Cir. 1988), enfg. 284 NLRB 698 (1987) (employer's announcement that previously scheduled wages had to be deferred until after the union election violated the Act).

[13] To the extent that the Respondent relies on advice received from counsel, we find that its decision to withhold the increase until after the election was not motivated by that advice or a genuine desire to avoid election interference. Rather, we find that the advice furnished the excuse rather than the reason for withholding the increase. *Arkansas Lighthouse for the Blind*, 284 NLRB 1214, 1220 (1987). We also note that counsel's advice was disregarded when President Kobayashi decided to grant the increase after the Union's election defeat while objections were pending.

[14] The Respondent argues, inter alia, that this complaint allegation should be dismissed because the rule was never enforced or discussed during the campaign. Mere maintenance of an unlawful rule, however, violates the Act. We also note that the Respondent's assertion is refuted by its October 16 response. When employees asked ''why can't we put up any UAW literature in the cafeteria,'' the Company responded that, ''like many other companies, we believe our bulletin boards should be limited to communications from DTR to our associates and community or charitable notices.''

[15] We reject the Respondent's argument that only the Union may file exceptions to the judge's failure to rule on the consolidated election objections because the General Counsel should remain neutral in the nonadversarial, representation case context. The General Counsel controls the litigation of this consolidated matter and is a party that may file exceptions to the judge's failure to rule on the Union's election objections pursuant to Sec. 102.46 of the Board's Rules and Regulations.

[16] The Union alleged that the Respondent engaged in the following objectionable conduct:

1. Conducted a campaign of fear and intimidation through constant predictions of strikes, loss of customers and economic detriment, which would inevitably result from a union victory.
2. Granting of benefits prior to the election.
3. Promise of benefits before and after the election to influence the election outcome.
4. Confiscated union literature.
5. Interrogated employees as to their union sympathies.
6. Threat of plant closure and layoffs.

Continued

November 17, 1989 election be set aside. We will not direct that a second election be conducted, however, for as explained below, we find that the possibility of erasing the effects of the Respondent's unfair labor practices and of assuring a fair rerun election by use of traditional remedies is slight, and that employee majority sentiment once expressed through cards would, on balance, be better protected by a bargaining order.

7. We agree with the judge that the Union made no demand on the Respondent for recognition or bargaining. Therefore, the evidence fails to establish that the Respondent violated Section 8(a)(5) by refusing to bargain. *Eagle Material Handling of New Jersey*, 224 NLRB 1529 (1976) (the mere filing of a representation petition does not constitute a request for recognition or bargaining for 8(a)(5) purposes).

We find merit, however, in the General Counsel's exception to the judge's conclusion that the Union had not been validly designated by a majority of employees in the bargaining unit on September 25. The judge found that ''no less than 27'' of the 57 employee witnesses called by the General Counsel to authenticate signed authorization cards ''testified that when signing the cards, they were told the purpose was only to hold an election.'' The judge noted that many employees specifically stated that they were told that immediate recognition was not an objective of the Union; that a number of them recalled being told that they would have a right to decide later—at an election—whether or not they wished to be represented by the Union; and that practically all of them testified that the solicitor said the cards would be held ''confidential.'' Based on ''the entire record, considering especially a number of very significant and very relevant factors,'' the judge credited ''the large number of employee witnesses who testified clearly they were told the cards they signed were not intended to prove their immediate selection of the union as their bargaining agent.''

The judge relied on three bases to support his credibility resolutions. First, the judge found employee Martin Clum's prehearing affidavit, which states that Clum told certain employees ''that they weren't voting for the union, they were just requesting the opportunity to vote the Union in,'' and the testimony of four of the purported eight employees solicited by Clum (James Crow, Todd Reynolds, Amy Freytag, and Vicki Oates), directly contradicted Clum's testimony that he told solicited employees the same thing that UAW International Representative Hugh Smith did, i.e., that the cards would be used to get recognition and, if that failed, to get an election, and, further, that if they had any questions, to read the card before they signed. Second, the judge found that Smith's testimonial admission, that he told employees at the group meetings that the cards were confidential and that the Company would not see the cards, belied his assertion that his expressed purpose for obtaining the cards was to demand recognition. Third, the judge noted that Smith immediately filed an election petition and never demanded recognition from the Respondent. The judge's decision contains no discussion of the governing legal standards by which the Board determines the validity of authorization cards.

We find that the judge's credibility resolutions provide an insufficient basis under governing precedent to invalidate a majority of the authorization cards at issue.[17] We have carefully examined the testimony of each of the 57 witnesses called by the General Counsel and we find, contrary to the judge, that ''no less than 27'' of them did *not* testify that they were told that the *only* purpose of these cards was to hold an election. Applying the Board's *Cumberland Shoe* doctrine,[18] we find that even considering UAW International Representative Hugh Smith's testimony, the testimony of 46 employees specifically examined below, considered in conjunction with the unambiguous language on the face of their authorization cards, establishes that the Union represented a clear majority of the 77 unit employees as of September 25.[19]

In *NLRB v. Gissel Packing Co*., supra, the Supreme Court approved Board precedent for determining the validity or invalidity of authorization cards, as set forth in *Cumberland Shoe Corp*., supra. The Court described Board law in the following terms:

> Under the *Cumberland Shoe* doctrine, if the card itself is unambiguous (i.e., states on its face that the signer authorizes the Union to represent the employee for collective bargaining purposes and not to seek an election), it will be counted unless it is proved that the employee was told that the card was to be used *solely* for the purpose of obtaining an election.

395 U.S. at 584.

7. Indicated that it would be hopeless to gain any benefits if the Union is voted in.

[17] We have examined Todd Reynolds' and James Crow's testimony below and we find that their testimony is not necessarily inconsistent with Martin Clum's testimony. In any event, we find that the representations made to them were insufficient to invalidate their cards. We do not rely on Amy Freytag's or Vicki Oates' cards, among others.

[18] *Cumberland Shoe Corp*., 144 NLRB 1268 (1963), enfd. 351 F.2d 917 (6th Cir. 1965), reaff. in *Levi Strauss & Co*., 172 NLRB 732 (1968), both approved in *NLRB v. Gissel Packing Co*., 395 U.S. 575, 606–608 (1968).

[19] The parties stipulated that there were 78 employees in the bargaining unit on September 22 as set forth on G.C. Exh. 72, a computerized payroll record. The record reflects that employee Janine Rader left the Respondent's employ after working on Friday September 22 and did not report for work thereafter. We do not rely on Rader's card to establish a card majority among the remaining 77 employees.

The 57 authorization cards at issue in this case are not materially different from the unambiguous, single-purpose authorization cards in *Gissel, Cumberland Shoe*, and *Levi Strauss*. The top of each card states ''*AUTHORIZATION TO UAW*.'' Underneath this conspicuous authorization, the card contains smaller type authorizing the UAW to represent the signatory in collective bargaining.

The single purpose of the authorization could hardly have been made clearer. Immediately after the space for the employee's name is the statement that the employee ''does authorize UAW to represent me in collective bargaining.'' The signatory must sign the front of the card at the bottom. The cards state in large type on the back: ''This card will be used to secure recognition and collective bargaining for the purpose of negotiating, wages, hours and working conditions.'' At no point does the card refer to an election or make any statement inconsistent with the stated single purpose of designating the Union as collective-bargaining representative. The Board has previously held, with court approval, that such cards are unambiguous, single-purpose authorization cards. *Ona Corp. v. NLRB*, 729 F.2d 713, 723–724 (11th Cir. 1984).

The *Gissel* Court fashioned the following rule for unambiguous single-purpose authorization cards:

> [E]mployees should be bound by the clear language of what they signed unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature.

395 U.S. at 606. Thus, where the card on its face clearly declares a purpose to designate the union as collective-bargaining representative, the only basis for denying face value to the authorization card is affirmative proof of misrepresentation or coercion. *Levi Strauss & Co.*, 172 NLRB 732, 733 (1968).

In *Levi Strauss*, the Board explained and reaffirmed the *Cumberland Shoe* doctrine in the context of unambiguous, single-purpose authorization cards. The Board stated:

> Declarations to employees that authorization cards are desired to gain an election do not under ordinary circumstances constitute misrepresentations either of fact or of purpose. As in the instant case, where the Union did use the evidence of employee support reflected by the cards to get an election, such declarations normally constitute no more than truthful statements of a concurrent purpose for which the cards are sought. That purpose, moreover, is one that is entirely consistent with the authorization purpose expressed in the cards, as well as with the use of the cards to establish majority support. A point sometimes overlooked is that in basic purpose there is no essential difference between cards that are needed for a showing of interest to gain an election and cards that must be used to support a majority designation showing in a Section 8(a)(5) complaint proceeding. . . .
>
> Thus, the fact that employees are told in the course of solicitation that an election is contemplated, or that a purpose of the card is to make an election possible, provides in our view insufficient basis in itself for vitiating unambiguously worded authorization cards on the theory of misrepresentation.

Applying the foregoing legal principles, we perceive no valid reason for the judge's refusal to accord the usual probative value to unambiguous authorization cards simply because Smith or Clum may have stressed the election purpose of the cards or the fact that the cards would be kept confidential. The Supreme Court in *Gissel* has specifically considered and rejected this reasoning.

In *General Steel Products*, 157 NLRB 636 (1966), one of four cases consolidated in *Gissel*, the trial examiner, in language cited and approved by the Supreme Court as the ''limits,'' rejected the respondent's contention

> that if a man is told that his card will be secret, or will be shown only to the Labor Board for the purpose of obtaining an election, that this is the absolute equivalent of telling him that it will be used only for purposes of obtaining an election.[20]

Thus, the trial examiner in *General Steel* rejected, with Supreme Court approval, the respondent's contentions that cards should be invalidated because employees were told one or more of the following: (1) that the card would be used to get an election; (2) that an employee had the right to vote either way, even though he signed the card; and (3) that the card would be kept secret and not shown to anybody except to the Board in order to get an election.[21] These statements, singly or jointly, do not foreclose use of the card for the purpose designated on their face.

Thus, the proposed confidential use of the cards to secure an election does not alter their essential character as union designations. Accordingly, we reject the Respondent's argument that Smith's admission that the cards would be confidential supports the judge's conclusion that employees were told that the sole purpose of the cards was to bring about an election.

We also reject the Respondent's argument that the *Cumberland Shoe* rationale is inapposite because the testimony of a few employees demonstrates that they

[20] 395 U.S. at 608.

[21] 157 NLRB at 645, cited at 395 U.S. 584–585 fn. 5 and 608.

were confused about the meaning of terms of art used on the cards (i.e., ''to secure recognition and collective bargaining,'' and ''authorize UAW to represent me in collective bargaining''), and did not understand that they might be selecting the Union as a collective-bargaining representative without an election. Like the cards at issue in *Gissel*, *Cumberland Shoe*, and *Levi Strauss*, the cards here unambiguously authorized the Union to represent the signing employee for collective-bargaining purposes and there was no reference to an election. As the Board explained in Levi Strauss, ''an employee who signs such a card may perhaps not understand all the legal ramifications that may follow his signing, but if he can read he is at least aware that by his act of signing he is effectuating the authorization the card declares.'' 172 NLRB at 733.

Perhaps more importantly, where as here, the purpose of the card is set forth on its face in unambiguous language, the Board may not, in the absence of misrepresentations, inquire into the subjective motives or understanding of the card signer to determine what the signer intended to do by signing the card. Gissel held that such evidence is not permissible. The Court specifically rejected ''any rule that requires a probe of an employee's subjective motivations as involving an endless and unreliable inquiry'' due to the tendency many months after a card drive and in response to questions by company counsel, to give testimony damaging to the union, particularly where the company, as in the instant case, has threatened employees in violation of Section 8(a)(1). 395 U.S. at 608. Consequently, we reject the Respondent's argument that even assuming, for merits sake, that Smith and union solicitors said that the cards were ''for an election,'' and did not state that the cards were ''only for an election,'' an assumption that we find supported by a preponderance of the testimony of the employees here, that the cards are invalid because the employees were misled about the purpose of the authorization cards.

Rather, we apply *Gissel*'s rule that employees are bound by the clear language of what they sign unless there is a deliberate effort to induce them to ignore the card's express language by telling them that the sole and exclusive purpose of the card is to get an election. We find, contrary to the judge, that regardless of Smith's or Clum's testimony, the testimony of 46 of 77 unit employees examined below, establishes that representations made by union solicitors to them were insufficient to invalidate their cards. We also find that the testimony of these employees, considered in conjunction with the unambiguous language on the face of their cards, authorizing the UAW to represent them for the purpose of collective bargaining, establishes that the Union represented a clear majority of the 77 unit employees as of September 25.[22]

The following eight employees testified that they were told that their cards would be used by the Union to obtain recognition by the Respondent and, if recognition was not granted, then the cards would be used for a vote: Kathy Hiestand,[23] Tim Korte,[24] Michele Selby,[25] James McClain,[26] John Latimer,[27] Brian Baumgartner,[28] and Corey Simpson.[29] Accordingly, we find their cards valid.

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[22] In examining the testimony of these employees, we use R. Exh. 2 to supplement their testimony. This exhibit establishes that 38 employees attended one of two union meetings conducted by Smith and held for the first or second shift on September 19.

[23] Kathy Hiestand attended the first-shift meeting. She testified that Smith ''explained to us that they were attempting to get a majority of the associates to sign cards so that we could present them to the company for recognition. And if that didn't happen, we would present them for a vote.'' She read and signed the card at the meeting.

[24] Timothy Korte attended the first-shift meeting. He testified that Smith said that the cards were ''dual purpose. One was to get recognized, and the other was to file a petition for an election.'' Korte read and signed the card at the meeting.

[25] Michele Selby attended the first-shift meeting. She testified that Smith said the cards ''would be for voluntary recognition or to file for a petition for election.'' She read and signed the card at the meeting.

[26] James McClain attended first-shift meeting. He testified that Smith told employees that the cards were for two purposes. ''One of them was for—to get recognition of the union to represent us, and the other one would be the right to vote if we got enough of them signed.'' McClain read and signed his card at the meeting.

[27] John Latimer attended the first-shift meeting. He testified that Smith told employees ''if we got a majority of cards signed, we would try to get the company to voluntarily recognize and bargain, and if we couldn't do that, we would use them to petition for an election.'' Latimer read and signed his card at the meeting.

[28] Brian Baumgartner attended the first-shift meeting. He testified that Smith told employees, ''if we got a majority of people to sign these, hopefully, we would get DTR to recognize the majority and, therefore, they'd bargain with us. If not, we could use these to go ahead and petition for an election.'' Baumgartner read and signed his card at the meeting.

[29] Corey Simpson attended the first-shift meeting. He testified that Smith said, ''he was trying to get volunteer recognition about the cards for everybody that wanted to sign could sign. It wasn't that he wanted to get an election there.'' Simpson read and signed a card at the meeting.

We also find that the cards of Kathy McDougle,[30] James Lehman,[31] and Scott Evans[32] are valid. Their testimony does not establish that Smith deliberately and clearly canceled the clear authorization on their cards by stating that the only purpose of their card was to obtain an election or vote.

The following 12 employees testified that they read and signed cards without any disqualifying discussion with any card solicitor; Sue Kinn,[33] Dean Koenig,[34] Yeshai Erickson,[35] Janet Maxwell,[36] Steve Swallow,[37] Kenneth Myers,[38] Brad Fisher,[39] Robin Deatrick,[40] Duane Jenkins,[41] Billie Edwards,[42] Sherry Carpenter,[43] and Peggy Pegg.[44] We find these cards to be valid. We note that the Respondent has no objections to the cards signed by Kinn, Erikson, Maxwell, Swallow, Jenkins, Carpenter, and Pegg.

We find that the cards of employees Donald Anderson, James Crow, Charlene Wireman, John Szippl, Steve Unterbrink, Timothy Pulford, Michael Selby, Nathan Weis, Todd Reynolds, Melissa Garrick, Carla

[30] Kathy McDougle read and signed a card at the first-shift meeting. She testified that Smith said, ''it was just to let the company know that we was interested in the Union, and it would be confidential, that nobody would ever find out that we ever signed the cards.'' We find that McDougle's card is valid. She was not told that the sole or only purpose for signing the card was to obtain an election.

[31] James Lehman attended the second-shift meeting. On direct examination by the General Counsel, he testified that he read and signed the card at the meeting. On cross-examination, he testified as follows:

> Q. Did Mr. Smith tell you the cards would be confidential?
>
> A. Yes he did.
>
> Q. Did he tell you the purpose of the card?
>
> A. Yes, I knew.
>
> Q. What did he say?
>
> A. It was—they had to have 66% to call for an election. They had to have that many green cards signed. I knew exactly what it was for.
>
> Q. Tell me what Mr. Smith told you about the card?
>
> A. It was just to bring up a UAW vote in DTR.
>
> Q. And that's what Mr. Smith said?
>
> A. I ain't marking word for word what he said.
>
> Q. My question to you sir, though, is your best recollection as to what Mr. Smith said. Is that what you told me?
>
> A. Yes, I suppose.

On redirect examination, after the Respondent objected to a question it considered leading from the General Counsel, the judge asked the following questions:

> Q. Did this man Smith, who gave out these cards, you signed one. Did he say what he was going to do with the cards?
>
> A. Yes, he did.
>
> Q. What did he say? Try to remember what he said.
>
> A. Once they got over the majority of the people working at DTR, then they would bring them forth to DTR.
>
> Q. What?
>
> A. They would bring the card forth to DTR showing that there is—that the people at DTR as interest in the UAW.

We find Lehman's card to be valid. He was not told that the sole purpose for signing the card was to obtain an election.

[32] Scott Evans attended the second-shift meeting. Evans testified that Smith told us ''that the cards, that we'd use them to obtain a vote.'' Evans read and signed a card at the meeting.

[33] Sue Kinn read and signed her card dated September 20, after being solicited by Baumgartner in the breakroom. She testified that Baumgartner said, ''read it and if I had any questions to ask him, and that was about it.'' She testified that she read the card, had no questions, and gave it back to him.

[34] Dean Koenig attended the second-shift meeting. He read and signed his card dated September 19. His best recollection was that he signed the card at the meeting. We find that his card is valid because he was not told that the sole purpose of the card was to have an election.

[35] Yeshai Erickson obtained her card in the breakroom. She believed that Clum gave her the card. She read and signed the card either in the parking lot or in the breakroom after she clocked out. She had no discussion with the person who gave her the card.

[36] Janet Maxwell read and signed her card dated September 20, after receiving the card from Clum in the breakroom. She testified that he just asked her to sign it.

[37] Steven Swallow read and signed his card dated September 19 after receiving it from Clum in the breakroom. He testified that he did not really discuss with Clum the purpose of the card and that Clum just said ''sign it if you want to.''

[38] Kenneth Myers attended the first-shift meeting. He was promoted to a group leader in October, before the election. He testified that he read and signed his card dated September 19 at the meeting. We find that Myers' card is valid.

[39] Brad Fisher attended the first-shift meeting. He became a group leader in December. He testified that he filled out his card dated September 19, but he can't recall if he read it before he signed it. We find that Fisher obviously read the authorization in order to complete the card. He testified that he was a high school graduate. An employee's testimony that he or she failed to read a card does not necessarily invalidate the Board's reliance on the card as evidence of majority support. *Ona Corp*., 261 NLRB 1378, 1410 (1982), enfd. 729 F.2d 713 (11th Cir. 1985). We find that Fisher's card is valid.

[40] Robin Deatrick became a group leader 2 or 3 weeks after the election. Her card is signed, filled out, and dated September 20. She testified that she was solicited by McClain. She testified that McClain did not talk about the purpose of the card, but he did say ''nobody will ever find out that I signed the card.'' McClain agreed to leave a card for her in the solvent room. She read and signed the card and gave it back to McClain in the parking lot after work. We find that Deatrick's card is valid.

[41] Duane Jenkins testified that he signed and filled out his card dated September 19, after Clum had given him the card in the breakroom. When asked whether he read the card, Jenkins replied, ''No, just the information. Where it says you're to put your name and date.'' He left the card in Clum's car. He cannot recall the substance of any discussion with Clum when Clum gave him the card. Like Fisher's card, we find that Jenkins' card is valid.

[42] Billie Edwards testified that he read and signed a card at the second-shift meeting, and that Smith talked about the use of the cards, but he could not recall what Smith said because it had been so long ago.

[43] Sherry Carpenter testified that McClain gave a card to her after work on September 20 in the parking lot. She took it home, read it over, signed it, and then gave it to McClain the next day. She testified that she had no discussion with McClain or anyone else about the purpose of the card.

[44] Peggy Pegg testified that she read and signed a card on September 20 after she received it in the parking lot from McClain. She testified that McClain asked her to read it over to see if she understood it, and that he told her that it would be used ''to give the union authorization to represent me.''

Falk, Rita McVetta, Anna Goddard, Charles Todd Marshall, Elva Leffler, Tammy Thompson, Sonya Gordey, Cheryl Campbell, Todd Grismore, Doris Blackburn, Curt Stover, Anthony Lawrence and David Taviano are valid. The pertinent testimony of these 23 employees establishes that even though they were told that the cards were for an election or a vote, they were not told either explicitly or in substance that the cards would be used only or solely for an election or vote or for no purpose other than to help get an election or a vote as required to invalidate the cards under *Gissel.*

Donald Anderson testified that he read and signed the front of his card at the September 19 first-shift meeting, but did not read the back of the card because he was in a hurry. He testified that Smith stated that ''they needed a majority for the UAW to recognize, that they needed an election, or we needed, you know—I don't know how I want to put it—recognition for the employees.'' On cross-examination, Anderson testified as follows:

> A. I can't remember most of it, but he [Smith] was saying how the UAW would help us and other things to that effect, that we needed to vote on getting the UAW in on other things, and the green cards would help us get the election in.
>
> Q. Alright, so you thought when you signed this card that you were looking for an election?
>
> A. Basically to get the election in, to have—yes.

On redirect examination, Anderson was asked the following:

> Q. You indicated that Mr. Smith also said something about recognition; is that correct?
>
> A. I think I said that.
>
> Q. And do you recall what Mr. Smith said about recognition?
>
> A. Only that I think as people, that we should be recognized to hear what we have to say basically. I think I mean by recognition, I mean that they should be heard, what we have to say, you know.

He was not told that the only purpose of the card was to have an election.

James Crow filled out and signed his card dated September 19. He received it from Clum after work in the parking lot. On cross-examination, he testified as follows:

> Q. Did [Clum] say anything about the purpose of the card?
>
> A. Not to me, no.
>
> Q. Did he tell you what the card would be used for?
>
> A. It would be used to help possible if we have enough sign them we would be able to have an election.
>
> Q. Did he say anything else about the purpose of the cards?
>
> A. Not to my recollection.

Nothing that Clum said negated the written language of the card or amounted to a direction to Crow to disregard the written language authorizing the UAW to represent him. Nor was Crow told that the only purpose of the card was to have an election. *Montgomery Ward & Co*., 288 NLRB 126, 128 (1988). He became a group leader after the election in March 1990.

Charlene Wireman attended the second-shift meeting where she read and signed her card dated September 19. On cross-examination, she was asked, ''Did Smith explain the purpose of the cards at the meeting?'' She replied, ''he said that they would be used to get a vote if 70%—65 or 70% people signed them.'' She further testified as follows:

> A. And they would be confidential, and—and he would—the UAW would uphold with us if anything would happen from the time we signed the card until after the election.
>
> . . . .
>
> A. They would protect us from the date we signed the card up until after the election.
>
> Q. Did Mr. Smith say anything else about the card?
>
> A. Not that I can recall.

We find that Wireman's card is valid. Smith did not negate the clear written authorization of the card nor did he say that the only purpose of the card would be for an election.

John Szippl testified that he read and signed his card at the first-shift meeting. He was not asked about what Smith said. We find that Szippl's card is valid.

Steve Unterbrink testified that he read and signed his card dated September 20 after receiving it from Clum in the lunchroom. On cross-examination, Unterbrink stated that before he signed the card he talked to Baumgartner, who told him ''it was to bring a vote for the UAW and that, that's basically what he said.'' Unterbrink further testified as follows:

> Q. Did he say anything else?
>
> A. No.
>
> Q. Have you told me everything you and Baumgartner talked about as far as the cards are concerned that day?
>
> A. He just told me it was to bring a vote, and, for the UAW.
>
> Q. When you later talked to Mr. Clum, when you signed the card, did you and he have any discussion about the purposes of the card?

A. No.

Q. Did Baumgartner tell you the card would be kept confidential?

A. Yes, he did.

Q. Did Mr. Baumgartner say anything else to persuade you to sign the card?

A. He said that the union could get us more things, better benefits.

We find that Unterbrink's card is valid. Based on the totality of his testimony, we do not find that Baumgartner directed him to disregard the clear authorization on the card he signed when solicited by Clum 2 hours later. Unterbrink merely testified what Baumgartner ''just told'' him. He did not testify that Baumgartner stated that the card would be used solely for the purpose of an election. In these circumstances, Unterbrink is bound by the clear language of what he signed. *Gissel*, supra, 395 U.S. at 606. He became a group leader after voting in the election.

Timothy Pulford read and signed his card dated September 19 at the first-shift meeting. On cross examination, he testified that Smith told employees ''that the cards would be used to get a vote and DTR to try to get a union in there, which is UAW . . . . [A]ll that he said is that we had to have the majority if we wanted the majority to get in there.'' In response to a question from the judge about what Smith said he was going to do, Pulford replied, ''He just said that since we got the majority of the vote, that he would submit them.'' Pulford also testified that some employees were concerned about their jobs and that Smith did say that the cards would be kept confidential. We find that Pulford's card is valid. Smith did not state that the sole purpose for signing the card was to obtain an election so as to direct Pulford to disregard the card's clear authorization above Pulford's signature. *Jeffrey Mfg. Division*, 248 NLRB 33, 36–37 (1980).

Michael Selby testified that he read and signed a card at the first-shift meeting on September 19. He testified that Smith said, ''when we sign the card, if we got a majority it would be put up to a vote, that nobody would ever know that we signed the card . . . . That's my recollection. That's about it.'' We find that Selby's card is valid. He was not assured that the card would be used for no purpose other than to get an election.

Nathan Weis testified that he read and signed his card at the second-shift meeting. On direct examination, he testified that Smith said, ''that we needed so many to, green cards signed to have an election,'' and that he did not recall Smith saying anything else, although his recollection was pretty hazy because of the passage of time. We find that Weis' card is valid. *Montgomery Ward*, supra, 288 NLRB at 128 fn. 13.

Todd Reynolds testified that he read, signed, and understood his card dated September 22. Contrary to the judge's finding, Reynolds testified that he was solicited by Baumgartner, not Clum, and that Baumgartner, merely told him ''that the card would be confidential . . . that if enough green cards were signed there would be an election.'' When asked what the language on the card ''used to secure recognition'' meant, Reynolds replied, ''that if enough cards were signed, that the union could have an election. Exist, or at least have a chance to exist after an election. That's what I understood at the meeting.'' Reynolds also testified that he understood the card language ''would be used for collective bargaining'' to mean the ''same sort of thing where the union can bargain for wages,'' after an election. We find that Reynolds' card is valid. Under *Gissel*, Reynold's subjective motivation or understanding is irrelevant. In any event, Baumgartner's solicitation did not clearly direct Reynolds to disregard the card's express authorization, nor assure him that his card would be used for no purpose other than to get an election.

Melissa Garrick read and signed her card, dated September 20, after it was given to her by McClain in the parking lot. On cross-examination, she testified that McClain told her, ''just that if the majority of the people signed it at work then the UAW would represent us in a vote'' . . . and that, ''Just that nobody would ever know that I signed one.'' We find that Garrick's card is valid. *Jeffrey Mfg. Division*, supra, 248 NLRB at 55 (Sonefelt's card).

Carla Falk testified that she read and signed her card at the second-shift meeting. On cross-examination, she stated that Smith told her the following:

> He said they needed a certain percentage of the people in the factory to sign a card to show an interest, that means they showed an interest in letting the UAW represent them, represent the people . . . . He said that this was no way was a vote. That it would just-if there was enough signatures we would get a vote. That no one would see them or know that we signed them.

We find that Falk's card is valid as Smith did not assure her that the card would be used for no purpose other than to get an election.

Rita McVetta read and signed her card at the first-shift meeting. She did not stay for the whole meeting. On cross-examination, she testified that Smith, ''just told us that no one would ever know about [the cards and] . . . we had to have certain amounts so we would be able to have a chance to vote, if we wanted to.'' We find that McVetta's card is valid and that Smith's solicitation did not amount to an assurance that her card would be used for no purpose other than to help get an election.

Anna Goddard read and signed her card at the first-shift meeting. On cross-examination, she testified that Smith told employees:

> Just that if there was a certain amount of employees at DTR that would sign the cards, that they would represent us, the associates, at DTR for a union. That it wouldn't be an automatic vote. Just that if they got enough cards, that they would represent us . . . . That the union wouldn't automatically be in if we had 57 votes, or I mean 57 people sign the cards, that it was just, we would get a chance to vote.

She also testified that Smith told employees that the cards would be kept confidential. We find that Goddard's card is valid. Her testimony does not establish that Smith told her that the cards would be used only for a vote.

Charles Todd Marshall testified that he read and signed a card at the first-shift meeting on September 19. On cross-examination, he testified that Smith told employees that they had to get so many cards signed ''to be able to have a vote on the union . . . . [T]o be represented by the union,'' and that the cards would be confidential. Marshalls' testimony is insufficient to establish that Smith assured him that his card would be used for no purpose other than to get an election.

Elva Leffler testified that she read and signed her card in the shop on September 20. On cross-examination, she testified that she could not remember which employee gave her the card and that several of the employees talked to her about signing the card, but they did not explain to her what the card would be used for. She stated she knew what the card would be used for based on what she heard Smith say at the union meeting. She testified that Smith told employees that the cards were totally confidential and that, ''the card was to—if a high enough percentage of the employees signed the card, that would give us the option to have a vote, to either bring in or not bring the union.'' She also testified as follows:

> Q. Did Mr. Smith indicate there was any other purpose for the card?
>
> A. Basically, he did tell us what would happen with the card, but that was the purpose of the card.
>
> Q. What did he tell you would happen with the card?
>
> A. He said that he was going to transfer on to the union office. It was part of the legality that goes on with the card. He said, it's total confidentiality. He said, there is no way it would be a threat to us as employees—that it's total confidential and we would never be brought out in the open about it.
>
> Q. Were there any questions from the floor about the purpose or use of the cards? . . .
>
> A. Basically, people were concerned that it would jeopardize their jobs.

We find that Leffler's card is valid. Her testimony does not establish that Smith assured her that the cards would be used for no purpose other than to get an election.

Tammy Thompson testified that she read and signed her card dated September 20 after receiving it from Baumgartner in the parking lot. She testified that Baumgartner did not indicate the purpose of the card. She testified that Smith told employees at a September 16 union meeting[45] that the purpose of the cards was, ''to get enough to have an election.'' She also stated that Smith did not indicate that there was any other intended purpose for the cards and that the cards would be confidential. We find that Thompson's card is valid. There is nothing in the circumstances surrounding the solicitation of her card that directed her to disregard the card's clear authorization, nor was she assured that the card would be used for no purpose other than to get.

Sonya Gordey read and signed her card at the first shift meeting on September 19. When asked what Union Representative Smith told employees, she replied:

> Just mainly about you had to get enough people to sign the card to have an election. They needed some percentage, and I'm not for sure what the percentage was. And when they got that, they'd send the card somewhere, and it would be confidential and no one would ever know that we signed them . . . .

On cross-examination, she replied negatively when asked whether Smith indicated any other purpose for the cards. We find that Gordey's card is valid. Her testimony does not establish that Smith deliberately canceled the express authorization on her card or otherwise assured her that it would be used for no purpose other than to get an election.

Cheryl Campbell read and signed her card at the first shift meeting on September 19. On cross-examination, she testified, ''that Smith . . . told us, if we had enough signatures, I think it was 60% that we would be able to have a vote.'' She did not recall Smith indicating any other purpose for the card, but did recall his stating that the cards would be kept confidential and would be sent to ''the main office or something to be counted to make sure there were enough to have an election.'' We find that Campbell's card is valid. Her testimony fails to establish that Smith deliberately and clearly canceled the express authorization on her card

[45] No cards were distributed at this meeting, an election.

or otherwise assured her that the only purpose of the card was to get an election.

Todd Grismore testified that he read and signed a card at the first-shift meeting. On cross-examination, he testified that Smith told employees that the cards would be confidential, that Smith intended to turn them in to the UAW, and that he ''had to have a certain amount of those cards signed to have an election,'' and that he did not say that he needed the cards for any other purpose. We find that Grismore's card is valid. Smith did not inform him that the only purpose of the card was to get an election.

Doris Blackburn testified that she read and signed her card at the first-shift meeting. On cross-examination, she testified that Smith said, ''the purpose for the cards, were to have a majority of the employees sign them so there could be a vote for or against the union,'' and that Smith did not give any indication of any other use for the cards, but he did say that they would be kept confidential. She also testified that Smith intended to send the signed cards ''to Washington to get a release someway about the vote. I can't recall the exact thing he was going to do—who he was going to send it to.'' On redirect, she testified that Smith ''was just talking about the benefits of the union for the associates . . . .'' We find that Blackburn's card is valid. Smith did not inform her that the only purpose of the card was for an election or vote.

Curt Stover testified that he read and signed his card at home following the first-shift meeting on September 19, and that he gave his card to McClain the next day. He could not recall any discussion with McClain. On cross-examination, Stover testified that Smith told employees at the meeting ''that the cards were to establish interests to have a vote for or against the union,'' and he did not indicate that the cards had any other purpose. Stover also testified that Smith indicated an intent to send the cards ''someplace to get clearance to have the vote.'' We find that Stover's card is valid. His testimony fails to establish that Smith stated that the only purpose of the cards was to obtain an election. We note that the Respondent has no objection to counting Stover's card.

Anthony Lawrence testified that he read and signed his card at the first-shift meeting. On cross-examination, Lawrence stated that Smith told employees that ''if he had a certain amount of cards signed, they could have an election,'' and that Smith did not indicate any other use for cards, although he did state that they would be kept confidential and sent to the union office for authorization for an election. On redirect, Lawrence acknowledged that he was in the back of the meeting drinking coffee and was not paying attention to everything that was said. We find that Lawrence's card is valid. Smith did not inform him that the only purpose of the card was for an election.

David Taviano testified that he read and signed the card at the second-shift meeting. On cross-examination, he testified that Smith explained to employees that the purpose of the cards was to ''establish a vote.'' Taviano did not remember Smith indicating any other purpose for the cards; ''the main thing was to get a vote in for a union vote.'' He testified that Smith also told employees the cards would be confidential and that Smith was going to send them in somewhere like the federal government . . . .'' On redirect, Taviano remembered watching a movie about unions and fair treatment and benefits. We find that Taviano's card is valid. His testimony fails to establish that Smith told him that the only purpose of the card was for an election or vote.

Based on the foregoing testimony, we find that the 46 cards discussed above, a clear majority, constitute valid designations of the Union as bargaining representative.

The Propriety of a Bargaining Order

We find merit in the General Counsel's exception to the judge's failure to grant a bargaining order to remedy the Respondent's extensive and pervasive unfair labor practices.[46] With respect to the appropriateness of a bargaining order, a number of factors lead us to conclude that the Respondent's unfair labor practices, in the presence of a preexisting card majority, and regardless of a bargaining demand, ''have the tendency to undermine majority strength and impede the election processes,'' and require a bargaining order as a remedy.[47]

In *Gissel*, the Court stated that in determining whether a bargaining order remedy is warranted, the Board may properly consider ''the extensiveness of an employer's unfair labor practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future.'' 395 U.S. at 614–615. The Court further stated that a bargaining order should issue in category-two cases where the Board finds that ''the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order.'' Ibid.; see also *International Door*, 303 NLRB 582 fn. 2 (1991).

[46] The absence of an 8(a)(5) finding here does not affect the propriety of a bargaining order required to remedy extensive and pervasive unlawful conduct. *Eagle Material Handling of New Jersey*, 224 NLRB 1529 (1976).

[47] In *Gissel*, the Court identified two categories of cases in which a bargaining order would be appropriate. The second category involves ''less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes.'' 395 U.S. at 613–615.

The Respondent's far-reaching unlawful conduct, occurring both before and after the election, brings this case under the *Gissel* category two umbrella. The Respondent's unlawful conduct both before and after the election created a lasting coercive impact not likely to be dissipated by traditional remedies. After learning of the existence of union activity at its plant, the Respondent immediately embarked on a widespread antiunion campaign calculated to discourage support for the Union. Respondent's violations were extensive in number, severe in nature, and constitute the kinds of unfair labor practices which destroy election conditions for a long period of time.

The Respondent's threats of plant closure, job loss, and layoffs carried a long-term coercive impact, because such threats constitute ''one of the most potent instruments of employer interference with the right of employees to organize.''[48] In this case, the coercion was exacerbated because some of the unlawful acts, i.e., promises of improved wages and working conditions, postelection wage increases, and improved benefits, were communicated by the Respondent's president, Yuji Kobayashi, whose position made it impossible to take the threats, promises, and improvements lightly. President Kobayashi's October 18 memo addressed to all employees implicitly promised improved wages and working conditions if the Union lost the election. One week before the election, Kobayashi issued a 4-page letter to employees telling them that ''our business would automatically be reduced if the union wins the election'' and our customers took away our sole source business, and ''if the contract is negotiated without a strike, employees are laid off while the inventory is used,'' and ''bringing in a union would lose business for DTR.'' As explained here, and viewed against the backdrop of the Respondent's other unfair labor practices, Kobayashi's statements were not based on objective facts as to demonstrably probable consequences beyond the Respondent's control sufficient to support his conclusions about how union organizing would affect his business or the employees' job tenure. Such ''hallmark'' threats of layoff and loss of business coming from the Respondent's highest official are ''among the most flagrant.'' *Eddyleon Chocolate Co.*, 301 NLRB 887, 891 (''the most pernicious . . . .'' Such threats are ''more likely to destroy election conditions for a longer period of time . . . .'').

Supervisors Jordan, Lewandowski, Falk, and Brinkman as well as Department Head Wagner and Human Resources Manager Haynes supplemented President Kobayashi's written communications to employees by actively participating in the campaign through related threats, coercion, or promise of benefits.[49] These managers and supervisors continued to repeat the messages conveyed by President Kobayashi in his written communications and meetings with employees—unionization would result in plant closure, layoffs, and loss of business, while the defeat of the Union in the election would result in wage increases and improved benefits and working conditions. Further, by simultaneously promising a wage increase if the Union were defeated, the Respondent conveyed the powerfully coercive message that employees would lose their livelihood for supporting the Union, but would receive substantial benefits for rejecting it. The coercion was made more credible by the fact that employees were already receiving illegal benefits and promised improvements in working conditions that were unlawfully solicited and remedied through the communication box during the midst of the union campaign. The illegal threats, promises, solicitations, and improvements were not isolated instances, were repeated over and over again by the Respondent's agents, and affected virtually all employees. Thus, the coercion pervaded the unit.

After the Union lost the election, President Kobayashi then announced a substantial wage increase averaging $1.85 per hour for each employee, retroactive to about the election date. Kobayashi also unlawfully announced an individual calculation of the new wage scale progression and a shorter probationary period that resulted in improved holiday pay for certain employees. Indeed, by granting these benefits when the Union was defeated, the Respondent further solidified the credibility of its word and that it would make good on the implied promise of improved wages and benefits in the October 18 memo to employees and on the promises of wage increases and benefits made by Supervisors Haynes and Lewandowski.

Thus, if a new election were held, employees who have already seen the Respondent carry out its promises would be justified in believing not only that additional benefits would flow from a second union defeat, but also that the Respondent would similarly carry out its threats to close the plant in the event of a union victory.[50]

In light of the foregoing, we agree with the General Counsel that the unfair labor practices found here are the type of lingering violations that make the holding of a free election unlikely. *Gissel*, supra at 610. Rather, the employee's representation desires expressed

[48] *Chemvet Laboratories v. NLRB*, 497 F.2d 445, 448 (8th Cir. 1974). See *Thriftway Supermarket*, 276 NLRB 1450, 1451 (1985), and cases cited there, enfd. mem. 808 F.2d 835 (4th Cir. 1986).

[49] Indeed, in finding a bargaining order warranted, we deem it significant that the Respondent's antiunion campaign was engineered by management ''from top to bottom,'' including its president, human resource managers, department heads, and front-line supervisors. See *Thriftway Supermarket*, supra, 276 NLRB at 1451.

[50] See *Quality Aluminum Products*, 278 NLRB 338 (1986), enfd. 813 F.2d 795 (6th Cir. 1987) (the employer demonstrated a ''willingness to carry out its threats''); *Tipton Electric Co.*, 242 NLRB 202 (1979), enfd. 621 F.2d 890, 898–899 (8th Cir. 1980).

through authorization cards would be better protected, on balance, by the issuance of a bargaining order. Otherwise, the Respondent would be rewarded for its wrongdoing. Id.[51]

Accordingly, we shall order the Respondent to bargain with the Union as the duly designated representative of employees, effective September 25, 1989, the date the Respondent embarked on a clear course of unlawful conduct after the Union had obtained authorization cards from a majority of unit employees. *Crown Cork & Seal Co.*, 308 NLRB 445 (1992); *Bi-Lo*, 303 NLRB 749 (1991); *Astro Printing Services*, 300 NLRB 1028 (1990).

Amended General Remedial Provisions

We agree with the judge that the Respondent's unfair labor practices warrant a broad cease-and-desist order requiring the Respondent to cease and desist from committing the specific violations found and from violating the Act ''in any other manner.'' We reject, however, the judge's recommended special remedial order that the Respondent reimburse the Board for all costs incurred in this proceeding from the date the charge was filed until the case is closed. We note that the defenses raised by the Respondent to its unfair labor practices were debatable rather than frivolous and that the merit of several allegations turned on credibility resolutions. *Workroom for Designers*, 274 NLRB 840, 842 (1986) (quoting *Heck's Inc.*, 215 NLRB 765, 767 (1974)). The cost reimbursement remedy is not appropriate in this case.

[51] We reject the Respondent's contention that turnover in the bargaining unit warrants denial of a bargaining order. The validity of a bargaining order depends on evaluation of the situation as of the time the unfair labor practices were committed. *Fun Connection & Juice Time*, 302 NLRB 740 (1991). Accord: *Exchange Bank v. NLRB*, 732 F.2d 60, 64 (6th Cir. 1984). Cf. *NLRB v. Action Automotive*, 853 F.2d 433, 434 (6th Cir. 1988), cert. denied 488 U.S. 1041 (1989) (high turnover unaccompanied by objective evidence that new employees do not support the union is no evidence of loss of majority status by the union).

Even assuming the relevance of employee turnover, we find that the evidence submitted by the Respondent, that the bargaining unit has expanded three or four fold and that 17 unit employees have been promoted out of the unit, does not remove the basis for the bargaining order. Even ''substantial and nearly complete turnover'' does not necessarily render a bargaining order inappropriate. *NLRB v. Lou DeYoung's Market Basket*, 430 F.2d 912, 915 (6th Cir. 1970). The Respondent points to no action it took to eradicate the effects of its threats of plant closure, layoffs and job loss, its promises of benefits, and its postelection fulfillment of promises to grant wage increases and other benefits after the Union lost the election. This serious and widespread misconduct demonstrates that the Respondent is deeply committed to its antiunion stance, has already taken steps indicating that it will not permit employees an uncoerced choice in a new election, and is not likely to retreat from that hardened institutional commitment.

Also, the record fails to establish complete turnover or replacement of the Respondent's management, who from top to bottom are responsible for the extensive antiunion campaign affecting all employees in the unit. Thus, the Respondent's powerful and coercive violations are likely to ''live on in the lore of the shop,'' and to be passed on from old employees or supervisors to new arrivals, thereby exerting a continuing coercive influence. See *Bandig, Inc. v. NLRB*, 583 F.2d 765, 772 (5th Cir. 1978); *Salvation Army Residence*, 293 NLRB 944, 945 (1989), enfd. mem. 723 F.2d 846 (2d Cir. 1990).

Conclusions of Law

1. The Respondent, DTR Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed at the Respondent's facility at 320 Snider Road, Bluffton, Ohio, excluding all group leaders, office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(a) of the Act.

4. The Union is now, and at all times since September 25, 1989, has been designated by a majority of unit employees through valid authorization cards as their exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act.

5. By soliciting, promising to remedy, and remedying grievances from employees in order to discourage support for any collective bargaining agent they might choose; promising improvements in wages, benefits, and other terms and conditions of employment if employees vote against union representation; threatening employees with plant closure, job loss, and layoffs if they vote in favor of a union; interrogating an employee as to the identity of union activists; maintaining or giving effect to an invalid no-solicitation/no-distribution rule; and giving raises and other improvements in wages, benefits, and working conditions to employees as promised rewards for voting against the Union, the Respondent has violated and is violating Section 8(a)(1) of the Act.

6. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, DTR Industries, Inc., Bluffton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting, promising to remedy, and remedying grievances from employees in order to discourage support for any collective-bargaining agent they might choose; promising improvements in wages, benefits, and other terms and conditions of employment if employees vote against union representation; threatening

employees with plant closure, job loss, and layoffs if they vote in favor of a union; interrogating an employee as to the identity of union activists; maintaining or giving effect to an invalid no- solicitation/no-distribution rule; and giving raises and other improvements in wages, benefits, and working conditions to employees as promised rewards for voting against the Union. This does not, however, require or permit any unilateral changes of improved wages, benefits or working conditions.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of employees in the aforementioned appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its place of business in Bluffton, Ohio, copies of the attached notice marked ''Appendix.''[52] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER OVIATT, concurring.

I agree fully with the majority's determination that the Respondent's numerous and highly coercive unfair labor practices make the holding of a fair election unlikely. I also recognize that the Supreme Court has explicitly approved counting single-purpose authorization cards in circumstances nearly identical to those under which many of the cards in this case were solicited—where the card solicitor tells the signer that the card will be used to get an election or will be kept secret. *NLRB v. Gissel Packing Co*., 395 U.S. 575, 585 fn. 5, 608 (1969). I write separately to express my concern about the continuing vitality and fairness of the Board's Cumberland Shoe rule. See *Cumberland Shoe Corp*., 144 NLRB 1268 (1963), enfd. 351 F.2d 917 (6th Cir. 1965).

Under *Cumberland Shoe*, an unambiguous authorization card that clearly authorizes the union to represent the employee will be counted unless the employee is told in so many words that the card will be used *solely* for the purpose of holding an election. *NLRB v. Gissel Packing Co*., supra at 584. Once the Board determines, pursuant to *Gissel*, that a fair election is unlikely and that a bargaining order may be a more effective remedy than an election, that determination transforms authorization cards into the equivalent of a secret-ballot election. ''The ultimate justification for this remedy, however, must be the protection of employee free choice.'' Note, *Union Authorization Cards*, 75 Yale L.J. 805, 818 (1966). Thus, for a *Gissel* bargaining order to be warranted, the Board's determination should be that the authorization cards truly reflect a majority of the unit employees' free choice of the union. In many cases, I believe that the determination is based on an unsound assumption.

Even when *Cumberland Shoe* was decided, the Board has recognized that authorization cards are a ''notoriously unreliable method of determining majority status of a union.'' *NLRB v. Flomatic Corp*., 347 F.2d 74, 79 (2d Cir. 1965). That is even truer today. In part this is due to the fact that a large segment of our work force is composed of individuals who do not speak English as their first language, or at all, or, if they do, cannot read simple declarative sentences. The unreliability of cards reflects the fact that of those who do read, many cannot comprehend or interpret correctly the technical language on an authorization card. These problems are compounded today by the increasing reliance on oral communications, a by-product of the television age. For these reasons, I believe that the average employee depends more at present than 30 years ago when *Cumberland Shoe* was handed down, on the card solicitor's oral communications. No longer can we confidently presume, as did the Gissel court, that an employee is sufficiently sophisticated to ''be bound by the clear language of what they sign . . . .'' (*Gissel*, supra at 606), when that employee may never get to the point of being able to comprehend that language.

Since 1963, when *Cumberland Shoe* was decided, the demographics of our nation have changed dramatically. There has been a massive influx of non-English speaking workers.[1] Many of these recent immigrants come from countries that do not have labor laws as we know them, and thus have no previous exposure to the application of our complex labor statutes.

[52] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[1] The Board has studied how various Regions at present handle issues relating to the use of interpreters at elections. The Board has found that the Regions agree that the problems presented by non-English speaking voters are serious and growing. In some areas of Southern California, for example, a large percentage of elections are at least bilingual, and many involve three or more languages.

Even for employees with English as a first language, recent studies have identified serious problems with their comprehension of the written word. Plainly put, a large segment of our English-speaking work force is functionally illiterate, and that segment appears to be growing despite recent efforts to improve the situation.[2] Thus, there appears to be a growing population of workers who are unable to understand the printed words on an authorization card.

Even if an employee is literate by today's standards, there is a good possibility that he will not fully understand the authorization card's language.[3] For the average employee who is not familiar with labor law terms but is familiar with secret-ballot elections in a democratic society, the words ''authorize to represent me for collective bargaining purposes'' could very well mean that the authorization goes into effect only after an election. Thus, even where a signed authorization card's language is unambiguous, I believe there is a distinct possibility that the card signer did not really understand that he was authorizing the union to be his exclusive bargaining representative without an election. That possibility is even stronger today, in this age of television, than it was 30 years ago when *Cumberland Shoe* was decided. Our television culture emphasizes oral communication at the expense of comprehension of the written word.[4]

For these reasons, workers today rely, even more than before, on oral representations made by the card solicitor. A card solicitor, however, is at present under no legal duty to fully inform an employee about how the card will be used. As long as the solicitor does not tell the employee that the *sole* reason for his signing the card is to secure an election the card will count. This frees the card solicitor to refer to the fact that the card can be used to get an election, and thus to mislead the card signer into believing that the card will be used for that purpose and for no other. Thus, the present application of *Cumberland Shoe* widens further the gap between the dictates of the law and the realities of industrial life. A reassessment of *Cumberland Shoe* plainly is needed.

Apart from problems of comprehension, I have found, in my experience, that employees often sign authorization cards for reasons having little or nothing to do with an informed, uncoerced willingness to have a union bargain for them. In a typical organizing campaign, like the campaign in this case, authorization cards are handed out to a group of employees after a union organizer's speech. In such a setting many employees may be induced to sign an authorization card because others in the group have signed—a kind of group psychology—without ever having read the card's language. Other employees may sign cards because they fear union retaliation, or simply because they want the union organizer to leave them alone.[5]

In my view, it is time for the Board to discard the *Cumberland Shoe* rule's legal fiction and to recognize that a signed authorization card in many circumstances will not accurately reflect an employee's free and knowing choice of a union as his exclusive bargaining representative. I believe that the Board should require that, if an authorization card is to be deemed valid: (1) it should state affirmatively that when the employee signs the card this constitutes a direct authorization to the union to bargain for the employee without an election; and, (2) the card's solicitor must explain to the employee that when he signs the card he authorizes the union to represent him for collective bargaining, even without an election.

[2] The Department of Education reports that 20 percent of American adults are functionally illiterate, and another 34 percent are only marginally literate. Each year approximately 2.2 million people join the ranks of the adult illiterate population.

The National Education Association's 1992 *English Language Proficiency Study* revealed that approximately 13 percent of American adults do not read at all, or read below the 4th grade level.

[3] A 1985 study, conducted by the National Assessment for Education Progress of 3,600 adults between the ages of 21 and 35 found that 80 percent could not read a bus schedule; 73 percent could not interpret a newspaper story; 63 percent could not follow written map directions; 28 percent could not write a billing-error letter; and 23 percent could not locate the gross pay-to-date on a paystub. National Assessment of Educational Progress, Educational Testing Service, *Literacy Profiles of America's Young Adults*, (1985). See also Dunlop, *To Form A More Perfect Union*, in 9 The Labor Lawyer (ABA) at 5 (Winter 1993).

[4] There is a growing body of scholarship on the effects of the shift away from a print-based culture toward a video-based culture. Because we now live in a society where the average household watches more than 7 hours of television on a daily basis, the correlation between television and literacy requires further study. There are those who believe that the rise of the video culture closely resembles ancient oral cultures where messages were events to be absorbed in a group, rather than concepts to be pondered in silence. Others argue that the video culture, like the oral culture, tends to destroy individuality, logical and sequential thought, abstract conceptualizing, deferral of gratification, and self-control—the very qualities that an employee must have to understand the meaning and significance of an authorization card and to be able to exercise a free choice in signing the card. See e.g., J. Meyrowitz, *No Sense of Place* (1985); G. Comstock, *Television in America* (1980); T. Williams, *The Impact of Television* (1986); N. Postman, *The Disappearance of Childhood* (1979); W. Ong, *Orality and Literacy* (1982).

[5] See *Somerset Welding & Steel*, 304 NLRB 32 (1991) (Member Oviatt, dissenting in part), remanded on other grounds 987 F.2d 777 (D.C. Cir. 1993).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT solicit, promise to remedy, and remedy grievances in order to discourage employee support for any collective-bargaining agent they might choose.

WE WILL NOT promise improvements in wages, benefits, and other terms and conditions of employment if employees vote against union representation.

WE WILL NOT threaten employees with plant closure, job loss, and layoffs if they vote in favor of a union.

WE WILL NOT unlawfully interrogate employees as to the identity of union activists.

WE WILL NOT give raises and other improvements in wages, benefits, or working conditions to our employees as promised rewards for voting against union representation (we are not, however, required or permitted to change these improvements unilaterally).

WE WILL NOT maintain or give effect to an invalid no- solicitation/no-distribution rule.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to engage in union activity or protected concerted activity in accordance with Section 7 of the Act.

WE WILL bargain, on request, with the International Union, United Automobile Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive collective-bargaining representative of all employees in the following unit:

> All production and maintenance employees employed at our facility at 320 Snider Road, Bluffton, Ohio, excluding all group leaders, office clerical employees, professional employees, guards and supervisors as defined in the Act.

All our employees are free to engage in protected concerted activities.

DTR INDUSTRIES, INC.

Charles Adamson, Esq., for the General Counsel.
James O. Perrin, Esq. and *James A. Rydzel, Esq. (Jones, Day, Reavis & Pogue)*, of Cleveland, Ohio, for the Respondent.
Robert Hammonds, of Toledo, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge. Hearings were held in this proceeding on June 18, 19, and 20, 1990, and on July 29, 30, and 31, 1991. A complaint by the General Counsel issued on March 23, 1990, based on a charge filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the Union), on February 8, 1990. The issues presented are whether the Respondent violated the statute by refusing to bargain with the Union, and whether it committed a number of violations of Section 8(a)(1) of the Act. Briefs were filed by the General Counsel and the Respondent after the close of the hearing.

On the entire record, and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Business of the Respondent

DTR Industries, Inc. (the Respondent), is an Ohio corporation with an office and place of business in Bluffton, Ohio, where it is engaged in the manufacture and sale of automotive components. Annually, in the course of its operation there, it sold and shipped from the one location products, goods and materials valued in excess of $50,000 to points outside the State of Ohio. I find that the Respondent is an employer within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A Picture of the Case

In September 1989, the Union had authorization cards passed around among the approximately 60 production and maintenance employees of this Company. In a matter of days—between September 19 and September 22—59 of the employees signed the cards, all received in evidence here. The cards in so many words ''authorize UAW to represent me in collective bargaining.''

As soon as the cards were signed, on September 22, Hugh Smith, the UAW International Representative who had engi-

neered the movement, mailed all these cards to the Board's Regional Office. On the 25th he filed a regular petition for an election. The election was held on November 17, 1989.

Between the signing of the first cards by the employees and the day of the election, the Respondent, via its managerial officers, committed a countless number of violations of Section 8(a)(1) of the Act to be sure the employees would vote against union representation—threats to close down the plant, threats to lay off employees, promises of increased pay if the union were rejected, even the granting of improved conditions of employment. All this will be detailed below, for there is no really serious question of credibility on that score. The employees were told they would be given the raises after the election, Sure enough, a majority of the employees voted in the election and they rejected the Union. Only 3 days later, the Company announced a pay increase for all the employees involved. A very substantial raise, to take affect retroactive to the very day of the election on November 17. That is how matters stood at the time the hearing opened on June 18, 1990.

As I view this total picture, the real question of substance to be decided is whether the Respondent must be ordered to recognize the Union, and bargain with it now, as the complaint and the General Counsel contend. If the Board's order does not establish the union as bargaining agent, the unfair labor practices will really go unremedied. What really influenced the employees to vote against the Union on November 17 was the Respondent's promise to give them all a substantial raise if they did so. The truth is that the principal reason employees try to be represented by a union is to get more money for their work. This Company gave these employees exactly what they wanted. It was an outright illegal act by the Company.

Under established Board law all I can do is order the Respondent not to do that again. If I could order the Company to take back that raise, if I could order the employees to return every penny of raises that they have been enjoying between November 17, 1989, and today—2 years of added money—surely they would be inclined to vote for the Union at the next election. But Board law does not permit me to order that remedy.

Absent an affirmative order to bargain with the Union now, all that can happen tomorrow is the holding of another election. But there is no assurance that the Respondent will not again give a good raise to its employees and thereby assure a second defeat of the Union. It is for this reason that the main issue here is the alleged violation of Section 8(a)(5), which, if proved, is followed by an affirmative bargaining order.

To start with, it is an undisputed fact that no one on behalf of the Union ever approached the Company to demand bargaining rights and recognition as majority representative. The Union never communicated with the Company before the election. In a literal sense, therefore, there can be no finding that the Respondent ''refused'' to bargain with the Union.

The General Counsel's case rests on the Board's ''Gissel'' principal.[1] If a union in fact represents a majority of the unit employees, and the company's committed unfair labor practices are extensive, as in this case, the company can be ordered in remedy to bargain with the Union even if there never was an outright demand. On this total record, I cannot find that before the election the Union represented, or was authorized to bargain for, a majority of the employees in the unit involved.

On September 19, 1989, Smith, the UAW International representative, had a meeting of employees at a motel; about 25 to 30 men were present. He gave a number of authorization cards to an employee name Martin Clum for distribution and solicitation. What did Smith say to the employees that day was the purpose of the cards? What did Clum in his widespread solicitation—he was a major solicitor among the employees—tell the employees was the purpose of the cards? Forty of these cards were signed that same day, 11 the next day, and 3 more in the next 2 days. On the 22nd all 57 of the cards were mailed to the Board's Regional Office to support an election petition.

Smith, the visiting UAW representative, testified that when he met with the employees he told them that the cards they would be asked to sign would be used to get recognition, and that if that failed they would be used to get an election. Smith also admitted he told the employees that day that the cards ''were confidential,'' and that the ''company would not see these cards.''

Clum, the principal solicitor among the employees, started his testimony by repeating Smith's story, that the cards were not to get an election but to obtain recognition directly from the Company. As Clum continued to testify his story changed.

> Q. Isn't it true, Sir, in your affidavit, you indicate that when you gave them the card to sign, you told them they weren't voting for the union, they were just requesting the opportunity to vote the union in, isn't that right, Sir?
>
> A. To have the opportunity to vote for the union. . . . Not to vote it in, necessarily, but to have the chance to say yes or no.
>
> Q. What do you tell them, then?
>
> A. Same thing Mr. Smith said, and also it was the opportunity they could vote either yes or no for the union and if they had any questions, to read the card before they signed it.

Asked to state which employees he personally asked to sign cards, Clum recalled eight names: Crow, Ericson, Jenkins, Reynolds, Maxwell, Freaytag, Swallow, and Oates.

All eight of these employees testified while identifying the cards they had signed, when they were received into evidence. Four of them said they had no recollection as to what conversation took place at the time. The other four testified as follows:

James Crow

> Q. Did he say anything about the purpose of the card?
>
> A. Not to me, no.
>
> Q. Did he tell you what the card would be used for?
>
> A. It would be used to help possible if we have enough associates sign them we will be able to have an election.
>
> Q. That's what Mr. Clum said to you?
>
> A. Yes.

[1] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

Q. Did he say anything else about the purpose of the cards?

A. Not to my recollection.

Todd Reynolds

Q. When Mr. Baumgartner handed you the card did you and he talk about it?

A. Briefly.

Q. Tell me what the two of you said.

A. He said he did say that the card would be confidential. And he said that if enough green cards were signed there would be an election.

Q. Did he say anything else?

A. No

Q. The card says that it would be ''Used to secure recognition.'' What does that mean?

A. That if enough cards were signed that the union could have an election. Be—exist, or at least have a chance to exist after an election. That's what I understood it to mean.

Amy Freytag

I think I filled in part before I signed my name to the bottom. Because it was like three or four days I was asking questions about the card and questions about the way it was worded on the back. And I was told it didn't mean anything it was just to get the election in.

Vicki Oates

A. She said that I was under no obligation to sign the card, that it was not going to bring the union in. It was just to give the union authorization to come to DTR. . . . To give them the authorization. If enough people signed the card to bring up a vote at DTR.

Q. But she specifically said the card would not work to bring the union in without a vote?

A. Right, Right.

Q. Was [there] ever discussion about the confidentiality of the card?

A. Yes, there was.

Q. What did you say and what did she say about that?

A. That, she told me that it would be confidential. That no one else would know that the card was signed. That it was completely confidential.

The General Counsel called 57 employees as witnesses at the hearing, each one to identify the union authorization card he or she had signed. Apart from the testimony of the 4 employees mentioned above, those who Clum said he solicited, no less than 27 others testified that when signing the cards they were told the purpose was only to hold an election. Many of them were specific in saying they were told that immediate recognition was not an objective of the Union. A number of them recalled being told that they would have a right to decide later—at an election—whether or not they wished to be represented by the Union vis-a-vis their employer. And practically all of them—even those who spoke in favor of the General Counsel's position—kept repeating that the solicitor always said the cards would be held ''confidential.''

On the entire record, considering especially a number of very significant and very relevant factors, I credit the large number of employee witnesses who testified clearly they were told the cards they signed were not intended to prove their immediate selection of the Union as their bargaining agent. I therefore find that the Union never was authorized to represent the unit employees in their relationship with the Respondent.

The General Counsel rests primarily on the clear language of the cards, which do say the signer authorizes the Union to represent him or her as bargaining agent. There is also the implied argument that in view of the unfair labor practices committed by the Company, before and after the election, especially the substantial raises it gave the employees as a reward for voting against the Union, it is to be expected that the employees would lie at the hearing to favor the Respondent now.

But there are three realities, undisputed on the record, which absolutely support my credibility resolutions.

1. The four employee witnesses solicited by Clum, as he himself admitted, contradicted him directly. That they were telling the truth, and that Clum lied throughout the hearing, is established as fact by Clum's prehearing affidavit, sworn to on March 9, 1990, 3 months before the hearing. It reads as follows: ''When I gave them the card to sign, I told them they weren't voting for the union, that they were just requesting the opportunity to vote the union in.''

2. On the subject of what he told the employees when he first met with the group, Smith's testimony includes the following: ''I made the statement that the cards were confidential. . . . I said that the cards were confidential and the company would not see the cards.''

Almost everyone of the employees who signed cards and appeared as witnesses said they were given exactly that assurance when their signatures were solicited. Surely Smith, an experienced international representative of the UAW, knew that an employer who is asked to recognize union as a majority representative has a right to be shown proof that a majority had authorized such a representative. When he assured all employees that their cards would never be shown to the Respondent, what he was saying was that he would not go to the Company at all, but would seek an election instead. His very use of the word ''confidential,'' which he had passed around to all the employees, gives a lie to his assertion at the hearing that his expressed purpose at the beginning was to use the cards to demand recognition.

3. And finally, what Smith did when the cards were signed removes all doubt as to the correctness of my credibility resolution here. As soon as he had all the cards in his hands—the very day the last three were signed—he mailed them to the Board's Regional Office and ran to file the election petition. This is exactly what all the employees now say Smith told them he was going to do. Smith never went near the Company, much less ever demanded recognition.

Enough. I find that the record does not prove any violation of Section 8(a)(5) by the Respondent.

On September 19, 1989, the first organizational meeting took place, with 25 to 30 employees present. They started signing union cards then and there. As shown above 57 cards were signed and the Board election took place November 17. Between September 19 and November 17 the Respondent's management representatives committed an unending number

of unfair labor practices, all falling within the established rule of prohibited conduct defined in Board decisional findings over the years. Some of the major techniques used by the Company to assure defeat of the Union at the much publicized election are not factually disputed. Two of the unfair labor practices committed were so broad and decisive of the election—which the Union lost in consequence—that they alone warrant a cease-and-desist order requiring the Respondent not to hereafter violate the status ''in any other manner.''

Early in October the Company installed suggestion boxes in both the men's and the women's locker rooms, for the publicized purpose of receiving opinions, comments, and questions to be answered by management. At the same time it also for the first time made an 800 number available for employees to call the Company and express their comments and concerns. This was the straight policy of the Respondent, now that there was a union in the picture, to deal directly with its employees in matters involving conditions of employment in order to bypass any collective-bargaining agent they might be tempted to choose. If ever there was a direct violation of Section 8(a)(1) of the Act this was it. And I so find.

The Respondent kept records of the questions and complaints that were raised by the employees through this new system of communication. There were received in evidence 42 such documents, each showing the employees' questions and the Company's full answers to him or her. They all speak in one form or another of what the Board has long called ''condition of employment.'' These documents, showing how the Company was doing it, is best to satisfy economic demands of its employees, were also publicized to all the employees.

The Respondent's defense to this unfair labor practice, so blatant on its face, is that the employees always voiced their complaints in the past and that therefore the Company did not change anything with the advent of the Union. Its president said the employees used to voice their grievances with the group leaders, who worked with them.

The group leaders were made supervisors after the union movement started, and the employees thereafter hesitated to talk to them. The suggestion boxes were installed as substitutes for the leaders. The difference between an occasional oral complaint by this or that employee, and the established formal, much publicized system of bypassing the Union at that critical time requires no comment from me. I find the unfair labor practices as alleged the complaint. *Reliance Electric Co.*, 194 NLRB 44 (1971), and *Middletown Hospital Assn.*, 282 NLRB 541 (1986).

On November 24, 1989, 7 days after the majority of employees voted to reject the Union, Kubayashi, the president of the Respondent and its top officers running this plant, gathered all the employees at a meeting and announced a very substantial raise in pay for all of them. This, of course, was one of the ''concerns''—to use the language of the Respondent's documents—which the employees had frequently voiced to management during the Union's organization campaign.

Martin Clum, a very active solicitor of the union cards, testified that when, the very day before the election, he asked Alan Haynes of the personnel department if the rumor of raises going up to $9.50 an hour was correct, Haynes told him that ''they [the management people] were in wage meetings at the time.'' This was consistent with a statement by the president, also recalled by Clum, made a few days earlier. Clum testified he asked Kubayashi ''if in fact the UAW was not elected or voted in to DTR, if we could have his word of honor that they would be improvements made by DTR. And he in fact said that we would have to trust his honor that things would improve.''

I have no reason for not believing Clum's clear statement, at the hearing, that Kubayashi was speaking English, and not through an interpreter.

Another employee, Timothy Korte, testified that in October Gred Lewandowski, the Company's quality control supervisor, got into a conversation with a number of employees in the lunch room. ''He [Lewandowski] asked us what we would like to have in a contract if we voted the UAW in on November 27.''

> Q. And what if anything do you say to him?
>
> A. We told him we would like a wage increase, some sort of pension plan and a seniority system.
>
> Q. And did Lewandowski make any response to you [to] what you said?
>
> A. He said he had seen the package that management was willing to offer us, and all three of those were in the package.

There was like testimony by employee Scott Evans, who recalled that Haynes, the personnel man, told him and other rank-and-file employees, the day before the election: ''Brad [an employee] asked about a proposed wage policy that we had been hearing about.''

> Q. And did Haynes have any response to that?
>
> A. He said that, Yes, there was a proposed wage package.
>
> Q. Did he say what it was?
>
> A. After Brad asked him another question, Brad asked him if we were to vote no, when would we hear about the wage package?
>
> Q. And did Haynes have a answer to that?
>
> A. Yes, He said that if we want to vote no in the election, that after the votes were counted on Friday afternoon, they would announce the wage package.

Again, from employee John Latimer: ''He [Lewandowski] said that he couldn't reveal the benefit and wage package, but a working day after the election, we would find out what that package was.''

> Q. Did he say anything else?
>
> A. He said it was better than what it was at the current time. He said every one would be pleased with it and no one would want to change a thing on it.

On this record, considering other closely related realities of things that admittedly were said by management representatives, I credit these witnesses. That the Respondent was adamantly determined to convince the employees into voting against the Union is very clearly shown. A number of times the supervisors told the rank and file that if they voted in favor of the Union, there would necessarily be substantial layoffs as a result. The employees were told that if

the Company became obligated to bargain with the Union it would immediately start producing a large stock of reserves of their ordinary products, so that in case the Union should call a strike, it would continue to service its customers for at least 90 days during any strike action. If the Union did not call a strike—that is, if the parties should come to amicable adjustment—the Company would then use its built up reserve of products which would mean that for 90 days the employees would be laid off because no production would be necessary during such a period.

This was the Respondent's way of telling the employees that if they did not reject the Union, they would pay a heavy price, no matter what followed. It was telling them that if the Union called a strike, of course the employees would be out of work, and of course suffer economically. But it also was telling that if Union did not strike they would pay an economic price anyway. In clear language the message was that the employees would suffer economically if they did not follow the employer's request that they vote against the Union in the Board election.

It was a violation of Section 8(a)(1) of the Act every time a management representative made that statement to employees about the danger of layoffs if they choose to vote for the Union, and I so find.[2]

There was another unfair labor practice committed a number of times by various officials of the Respondent. They kept telling the employees that the union activity was endangering the entire company business, as well as their own jobs. Early in November Joe Brinkman, a supervisor, told employee Clum: ''Honda was very concerned with the union activity that was going on within DTR. And that if the union was to come in that Honda had another nonunion company lined up that they would get their fuel filters and holes from. And that this would, in fact, shut down the department that I work in, the department I work in manufactures products specifically for Honda.'' ''That we could count on at least, at the very least, if Honda did not pull out the entire contract, which they could very well do, and face us with an indefinite lay off in our department that they would pull out at least 50 percent of their contract to spread around with some other companies.''

Lewandowski said the same thing to Clum: ''He expressed his concern that Honda was also very concerned with what was happening within DTR and relationship to the UAW and they were considering pulling out their contract.'' Robert Falk, a supervisor group leader, told employee Korte: ''He said they [members of management] noted one company was Toyota that would pull out 50 percent of their business if we voted in the UAW. . . . He said if we felt compelled to pass this information on to others.'' Again, from the testimony of employee Michelle Selby: ''She [Jordan, the supervisor] told us that if the union would come in, that we wouldn't have a job because Honda does not want parts from a union company. . . . And also, when work is slow, the Japanese will always find work for us to do, but if we are union organized we will be laid off.''

Another employee, Donald Anderson, recalled Jordan saying to the employees, again 3 weeks before the election, ''that she hated to see the union come in because they'd close the doors, and she didn't want to lose her job.''

Later that same day Jordan called McClain to the office, where supervisor Brinkman was also present. ''They also told me that if we got the union in, that the Japanese would probably go home because they just in time business would be—they wouldn't be able to just to run just in time any more because they would have to build a stockpile on account of the union being in there for layoffs, and the Japanese would probably go home and we would be bought out.''

In that same conversation McClain also recall Jordan speaking as follows: ''She also wanted to know if she could have the names, if I was one of them, or anybody pressing the union because she wanted to get it stopped; said that they just started it to open the companies eyes and it was—had gone far enough. . . . and they [Jordan and Brinkman] wanted to know who they could talk to to get it stopped.''

Testifying in defense, Jordan denied having asked for the names of the prounion people. She also said that ''usually'' (later changed to ''always'') it was the employees who brought up the subject of the Union. But Jordan also said that she did call employees into her office where, together would supervise over Brinkman, they talked about the Union with them ''from 30 to 45 minutes.''

Like others of the Respondent's supervisors, Jordan was not a credible witness. I do not believe either her denials, or her major assertion that it was the employees who provoked comments about the Union by management.

This questioning of employees as to the identity of the union activists among the employees comment was of course, again, a clear violation of Section 8(a)(1) of the Act and I so find. I make similar finding with the respect to the repeated statements by the supervisors that the Company would go out of business if the employees persisted in their prounion activities.

All this leads to the second of the two major unfair labor practices committed before, as well as after—the Board election. The first was the solicitation of grievances. The second was ''raises.'' Admittedly the Company officials prepared a schedule of raises for all the employees while the union campaign was going on. They talked about it a great deal. Also, according to some of its witnesses, a decision was made as to [a] substantially defined amount much before the election. The issue here is: did the Respondent tell the employees they would get their raises only if they voted against the Union? Did it withhold the raise after all the asserted studying and analysis until after the election in order to let the employees see that there was a reward for rejecting the Union?

Given the entire record—the many violations of Section 8(a)(1) already found, the employees' testimony about management telling them the Company was adamantly opposed to the Union, the other method used to satisfy the employees' grievances, and, above all, the timing of the general raises in fact given to all the employees, I find that the Respondent's agents told the employees, before the election, they would get a raise if they rejected the Union, and that

[2] Typical of the testimony of defense witnesses, which greatly defeats their credibility, is a statement by Joseph Brinkman, one of the supervisory group leaders who passed the word about jobs being lost in case of a union because of the pullout by Respondent customers. In his attempt to avoid admitting he said plainly that Honda would take its business away, he said: ''I could have told them what I thought Honda might do.'' When a manager representative tells employees they would lose their jobs if they vote for a union, what goes in the speaker's mind is completely irrelevant.

the actual granting of all those raises, immediately after the election, was the Respondent's way of assuring the employees their demands would always be satisfied so long as they reject the concept of collective bargaining. Both acts were clear unfair labor practices, as I so find.

President Kobayashi explained away the very significant timing of the raises by saying that although the decision as to the amount had been made long before, they were not granted because he had to go to Japan for personal reasons a few months before the election. The argument will not do. If the Company really felt the need to increase the wages for purely economic reasons, there was no reason why they could not have put it in affect in his absence.

A final attempted justification for the timing of those raises is also meaningless to me. Shorn of the excessive verbiage repeated by the defense witnesses, it all boils down to the simple assertion that giving raises is good for business. More precisely, the defense statement on the record is that raises are, and were given: (1) to make the Company competitive; (2) to adjust to living costs; (3) to be in a position to hire new employees; and (4) to satisfy complaints by employees. That giving raises accomplishes these results cannot be denied. It was not necessary, to prove all those points, for the Respondent to have called as a witness Robert Hall, a professor of operations management in the Indiana University School of Business. He knew nothing of the facts of this case, or its particular business operations. He simply spoke generally of how a business should be run if it is to succeed. In the process he specified that giving raises was a good thing to do.

The witnesses also spoke of a business principle called Kaizen, apparently a Japanese method of doing business. They also referred to it as the Respondent's ''philosophy.'' What all this ignored is the law of the land where this company is doing business. Merely because the owner of a commercial operation in Ohio comes from a foreign country, does not permit it to ignore the National Labor Relations Act, and the very decisions of the National Labor Relations Board, sustained in the highest courts of the land, as to what is permitted and what is prohibited in matters of labor relations. The Respondent violated American law and it must therefore be ordered to stop doing that. By promising to give raises if its employees reject the statutory guaranteed right to be represented by Union, and by giving them substantial raises for having agreed to do so, the Respondent violated and is clearly violating the National Labor Relations Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section II, above, occurring in connection with the operation of its business, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and the tend to lead to labor disputes burden obstructing and obstructing commerce.

REMEDY

It having been found that the Respondent committed a number of violations of Section 8(a)(1) of the Act it must be ordered to cease and desist from again committing such unfair labor practices. In the light of the severity of its past violations of the statutory provision it must also be ordered not to violate the statute in any other manner in the future.

The most effective unfair labor practice was, of course, the large raises it promised the employees if they voted against the Union and then actually gave them for having complied with the Respondent's demand that they reject collective bargaining. Since the effect of these raises cannot be removed from the minds of the employees, it is to be expected that in the event the Union should tomorrow again go to a Board election, the Company will simply promise another raise and again give it to the employees. Since the Company and the employees know that the raises cannot be taken away as part of the Board proceeding, this sort of bypassing of the statute by the Respondent will go on and on.

The situation therefore calls for a special remedial order. The Respondent must be ordered to reimburse the United States Government for all costs incurred in connection with this proceeding from the very day the charge was filed to the final close of the case.

CONCLUSIONS OF LAW

By soliciting grievances from employees in order to bypass any collective-bargaining agent they might choose, by yielding to individual employee demands and making concessions to their demands during a union organization campaign, by telling employees they would have improved conditions of employment if they rejected any union of their; choice, by telling employees there would be substantial layoffs if they voted for union representation, by telling employees the owners of the business would abandon it if they chose a union, with a result that the employees would lose their jobs, by asking employees for the names of the prounion activists in the work component, and by giving raises to employees as promised rewards for voting against union representation, the Respondent has violated and is violating Section 8(a)(1) of the statute.

The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]